81-147

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**U. S. PETITION FOR CERTIORARI**

**APPENDIX II**

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# In the United States Court of Appeals

## For the Seventh Circuit

## *No. 79-2568*

ANABEL J. McCUTCHEON,

*Plaintiff-Appellant,*

*vs.*

THE BOARD OF EDUCATION, CITY OF CHICAGO Mrs. Carey B. Preston, Michael J. Murray, Earl B. Hoffenberg, Joseph P. Hannon, William Rohan, Gerard J. Heing, Mario Garofalo,

*Defendants-Appellees.*

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Appeal from the United States District Court,
Northern District of Illinois, Eastern Division
Honorable Judges JOHN GRADY, GEORGE N. LEIGHTON,
*Presiding*

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**BRIEF AND ARGUMENT FOR APPELLANT**

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IN THE

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For the Seventh Circuit

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## *No. 79-2568*

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ANABEL J. McCUTCHEON,

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THE BOARD OF EDUCATION, CITY OF CHICAGO Mrs. Carey B. Preston, Michael J. Murray, Joseph P. Hannon, Earl B. Hoffenberg, William Rohan, Gerard J. Heing, Mario Garofalo,

*Defendants-Appellees.*

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Appeal from the United States District Court,
Northern District of Illinois, Eastern Division
Honorable Judges JOHN GRADY, GEORGE N. LEIGHTON,
*Presiding*

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## BRIEF OF PLAINTIFF-APPELLANT

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### NATURE OF THE CASE

Respondent, Anabel J. McCutcheon, was suspended on Sept. 7, 1976 without specifications by Petitioner former General Superintendent Joseph P. Hannon; then charged on September 16, 1976 with ten counts of "CONDUCT UNBECOMING A PRINCIPAL." App. B p. 2a. After "a" year-long hearing of 15 daily and one evening session before an Administrative Committee of Defendant Board Members: CAREY B. PRESTON, MARGARET WILD,

HENRY McGEE, HERBERT JOHNSON: McCUTCHEON, was "DISMISSED FROM THE SERVICE" as principal and teacher, tenured for 30 years. No charges were ever brought against her as a teacher. MICHAEL J. MURRAY is the ATTORNEY FOR THE BOARD; EARL B. HOFFENBERG is the Assistant Attorney for the Board and the Attorney for JOSEPH P. HANNON, Petitioner. WILLIAM ROHAN, GERARD J. HEING are District Superintendents, complaining witnesses against McCutcheon. MARIO GAROFALO, janitor, is a complaining witness against McCutcheon.

Plaintiff was a tenured principal and teacher for the Chicago Board of Education for 30 years. Plaintiff was denied unemployment compensation, 1978 by her employer on the basis of a conviction, 1976; reversed, 1977; and a tape recording excerpt improperly submitted to the Illinois Appellate Court, 1979 [App. "D" p. 5a.] by Defendant MICHAEL J. MURRAY in conspiracy with Assistant State's Attorney, Edward Kay in Appeal 79-578.

## JURISDICTIONAL STATEMENT

This is lawsuit brought under Title 42 U.S.C. §1983 and §1988 and the Fifth and Fourteenth Amendments to the Constitution concerning the suspension and the administrative hearing of the Chicago Board of Education, instituted against Plaintiff, Sept. 7, 1976 [76-866-1] resulting in Plaintiff's Deprivation of a means of a livelihood, liberty and property without due process, 1976 to date.

As no limitations are prescribed under 42 U.S.C. §1983 except those of the State Statutes, 122: §34-85, §34-22.7, and §34-49 as well as the Tenure Laws, reproduced in pamphlet form: "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois."

Title 42 U.S.C. §1983:

**§1983. Civil action for deprivation of rights.**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (complaint for administrative review).

Title 42 U.S.C. §1988

**§1988 Proceedings in vindication of civil rights**

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

Title 18: §241:

**§241. Conspiracy against rights of citizens.**

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exer-

cise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Title 18: §2236:

**§2236. Searches without warrant.**

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

## CONSTTTUTIONAL PROVISIONS

U.S. Const. Amend. I: Freedom of Religion, Speech, and the Press

"or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

United States Constitution, Amendment V: Guaranty of Trial By Jury; Private Property Respected:

"nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life, liberty, or property, without due process of law; nor shall private property to taken for public use without just compensation.

U.S. Const. Amend. VI: Rights of Accused Persons

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amend. XIV: Definition of Citizenship

"nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

## ILLINOIS STATUTES

Ill. Rev. Stat., 1975: 122: §34-85

**§34-85. Removal for cause—Notice and hearing—Suspension**

No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34—84) be removed except or cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the board of a duly authorized committee thereof. Written notice of such charges shall be served upon the teacher or principal not less than 20 nor more than 30 days be-

fore the date of hearing. The hearing shall be held and the decision rendered within 80 days from the date of service of the notice; provided however, that continuances of said hearing granted at the request of the teacher or principal shall not be included in computing this 80 day period. The hearing shall be public at the request of either the teacher or the board. The teacher shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense to the charges. Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher shall be given reasonable warning in writing, stating specificially the causes which, if not removed, may result in charges. The action and decision of the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 34—85b of this Act. Pending the hearings of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension. As amended by act approval Aug. 26, 1963. L. 1963. p. 3427.

Ill. Stat., 1975: 122: 34-22.7 Rehabilitation and Deferred Maintenance of School Buildings—Issuance of Bonds:

A separate ballot shall be used to vote upon such question on which shall be printed the amount, purpose and maximum rate of interest of the bond issue and shall be in substantially the following form:

Shall bonds in the amount of $120,000,000 be issued by the board of education of the City of ..... for the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating, modernizing and replacing existing school buildings and

YES .....

Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The ordinance shall be in force upon it passage. Added by act approved July 7, 1967. L. 1967. p. 1223, H.B. No. 1931.

**§34-22.7: Rehabilitation and deferred maintenance of school buildings—Issuance of bonds.**

For the sole purpose of rehabilitating and accomplishing the deferred maintenance of present school buildings the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefore without referendum in an amount or amounts not to exceed the aggregate Two Hundred Fifty Million Dollars ($250,000,000).

Ill. Stat., 1975: 122: §34-49: Contracts, expense and liabilities without appropriation:

No contract shall be made or expense or liability incurred by the Board, or any member or committee thereof, or by any person for or in its behalf, notwithstanding the expenditure may have been ordered by the board, unless an appropriation therefore has been previously made. Neither the board, nor any member of committee, officer, head of Department [DEFENDANT MICHAEL J. MURRAY] or employee thereof shall during a fiscal year expend or contract to be expended any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the budget, in excess of the amounts appropriated in

the budget. Any contract, verbal or written, made in violation of this section is void as to the board, and no moneys belonging thereto shall be paid thereon.

Jurisdiction is invoked in the Appellate Court under Title 28 U.S.C. §2202 (1970)

> "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

[Judgment Orders of the Honorable Judge Leighton are found in Appendix "E" and Appendix "F" pp. 6a-10a.]

**ISSUES PRESENTED FOR REVIEW**

1. Whether the Defendants deprived Plaintiff of a means of a livelihood and her constitutional rights of due process by disregarding the Tenure Laws. "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois" [Pamphlet Reproduced by the Appellant].
2. Whether the Plaintiff was deprived of her constitutional rights under the First and Fourteenth Amendment of personal liberty and due process: to a private hearing under the Illinois Revised Statutes, 1975: Chap. 122: 34-85.
3. Whether the Plaintiff was deprived of her constitutional rights under the Fifth, Sixth, and Fourteenth Amendments by being prosecuted on criminal charges [#1, #3, #5] in an administration hearing.
4. Whether the Plaintiff was denied her constitutional rights under the First and Fourteenth Amendments of the United States Constitution to criticize the Board and Defendant JOSEPH P. HANNON on Nov. 10, 1975.
5. Whether the Court of Judge Leighton had jurisdiction to consolidate this cause with a Title VII four-

year old complaint on Nov. 3, 1978 and the authority to deny Plaintiff a public jury trial by reason of this consolidation [Transcript, Jan. 19, 1979]

6. Whether the Nov. 3, 1978 "order of reassignment from Grady to Leighton," docketed Nov. 14, 1978, was a valid order of Judge Grady.

7. Whether the Court erred in dismissing WILLIAM ROHAN, leaving his name out of the Judgment Order (3899) [App. "E" p. 6a.].

8. Whether the Court erred in dismissing all Defendants for alleged immunity as acting in a "quasi-judicial" capacity (Judgment Order-3955) [Appendix "F" p. 10a.].

9. Whether the Defendant Attorneys have the statutory authority to represent Employees HANNON, HEING, ROHAN, GAROFALO; and whether they have the authority to represent the Defunct Board of Education on appeal without a public contract [Ill. Rev. Stat., 1975, 122: #34-39].

## STATEMENT OF THE FACTS

1. On September 7, 1976 Principal-plaintiff was suspended without any specification for "Conduct unbecoming a principal" by Defendant former General Superintendent, JOSEPH P. HANNON. [App. "A" p. 1a.].
2. On September 7, 1976 afternoon: Audubon Janitors GAROFALO, MORAN, MITCHELL, complaining witnesses of criminal suspension charges #1, 3, 5 (under the direction of District Superintendent WILLIAM ROHAN) searched and seized Plaintiff's personal property in her office without lawful authority. Office was moved across the Hall.
3. On September 10, 1976 EARL B. HOFFENBERG, WILLIAM ROHAN were in the Audubon School in the new "private" office discussing with Callie Mitchell the charges against McCutcheon.

4. On September 15, 1976 William Rohan and a member of the CHICAGO BOARD OF EDUCATION SECURITY SQUAD attempted to force entrance to Plaintiff's 94-year old Aunt Marie McCutcheon's home at 2653 Stewart Avenue, Evanston: an address that is listed only in her personnel file of ten years ago.
5. The Assistant Board Attorney, EARL B. HOFFENBERG, also revealed his presence on the premises at this time.
6. September 16, 1976 Plaintiff received by certified mail the ten charges against her for alleged "conduct unbecoming a Principal and failure to discharge her duties as a principal. The charges were filed with the Complaint. [App. B *p.2a.*]
7. September 27, 1976: $2,500.00 in Audubon School Funds to which Principal was a contributor and which Principal was ordered to account for by October 15, 1976 BY THE SCHOOL AUDITOR, NOT NAMED: was removed from the LAKEVIEW STATE BANK AND TRUST COMPANY by JOHN KULA, TEACHER-ASSISTANT PRINCIPAL on the order of William Rohan.
8. "A" hearing was held on the following dates and the complete transcript filed with the Clerk of the Circuit Court of Cook County:

| | | |
|---|---|---|
| 1-62 | October 6, 1976 | Earl B. Hoffenberg-Petitioner |
| 63-275 | January 17, 1977 | Earl B. Hoffenberg-Petitioner |
| 276-436 | January 28, 1977 | Earl B. Hoffenberg-Petitioner |
| 437-644 | February 1, 1977 | Earl B. Hoffenberg-Petitioner |
| 645-853 | February 8, 1977 | Earl B. Hoffenberg-Petitioner |
| 854-1044 | February 11, 1977 | Earl B. Hoffenberg-Petitioner |
| 1045-1192 | February 16, 1977 | Earl B. Hoffenberg-Petitioner |
| 1193-1305 | September 12, 1977 | Earl B. Hoffenberg-Petitioner |
| 1305-1536 | September 13, 1977 | Earl B. Hoffenberg-Petitioner |
| 1537-1622 | September 15, 1977 | Earl B. Hoffenberg-Petitioner |
| 1623-1805 | September 19, 1977 | Earl B. Hoffenberg-Petitioner |
| 1806-2010 | September 20, 1977 | Defense |
| 2011-2238 | September 21, 1977 | Defense |
| 2239-2468 | September 23, 1977 | Defense |

2469-2844 September 26, 1977 Defense
4 p.m. - 7:30 p.m. Earl B. Hoffenberg Cross-Exam of McCutcheon: Assisted by Board Attorney Kracjir

9. On October 6, 1976 McCutcheon's Attorney, JOHN B. SCHWARTZ, moved for the "trial" committee to: 2) appoint an impartial hearing officer 1) to produce names, addresses of witnesses, documents 3) that hearing officer be a licensed attorney because the committee was unqualified 4) that the Board employ outside legal counsel to advise. The motion was denied on all counts by CHAIRPERSON, MRS. CAREY PRESTON, Vice-President of the CHICAGO BOARD OF EDUCATION.
10. September 29, 1978 The Complaint for Civil Rights [78 C 3899] was filed with the Clerk of the United States District Court and assigned to Judge John Grady.
11. That on October 16, 1978 by letter to H. Stuart Cunningham, Clerk of the Court, Attorney PAUL H. HEINEKE (never having filed as Attorney of Record) solicited the consolidation of this separate cause with his two year old Title VII case before Judge Leighton. This letter was never docketed by the Clerk of the Court in any of the four cases it concerned. The letter was inaccurate.
12. That on October 16, 1978 by letter to H. Stuart Cunningham, Attorney THOMAS P. BROWN (not the Attorney of Record in any cause) solicited the consolidation of two cases 78 C 3894, 78 C 3955. This letter was never docketed by the Clerk of the Court in any of the four cases it concerned. The letter was inaccurate in facts.
13. That on October 28, 1978 Audubon Principal, Leona Collins misdirected the U.S. Marshal for service of summons on Defendant MARIO GAROFALO at his office in the Audubon School. The summons was held in the office of the Attorney for the Board, Defendant MICHAEL J. MURRAY.

14. That before November 1, 1978 Attorney Heineke (never having filed as Attorney of Record in 78 C 3899) wrote an ex parte communication to Judge Grady. That his letter is not docketed and is missing from all four case files despite the order of Judge Grady for Defendants to produce it.
15. November 2, 1978 Attorney Heineke wrote a second ex parte letter to Judge Grady. This letter is inaccurate in its statement of facts and is not docketed.
16. November 3, 1978 without a motion to consolidate or any notice to Plaintiff and with further ex parte communication to Judge Leighton Attorneys Brown, Heineke and EARL B. HOFFENBERG, DEFENDANT (not the Attorney of Record on any case) were granted a consolidation. Plaintiff was refused the right to speak against this consolidation.
17. November 3, 1978 Judge Leighton issued a pre-trial order in these consolidated cases; denied Plaintiff any discovery; denied Plaintiff the Court File kept in his chambers by not ruling on her motion for them upon his dismissal of her attorneys before trial.
18. That on November 7, 1978 Attorney THOMAS P. BROWN filed an appearance form under U.S. Supreme Court Rule #39 for Defendants Board, William Rohan, Earl B. Hoffenberg.
19. That on November 17, 1978 Attorney PAUL H. HEINEKE spoke for Defendants failing to separate JANITOR MARIO GAROFALO and without filing as Attorney of Record for any Defendants 78 C 3899. [3899 Transcript Filed 4763].
20. That on December 15, 1978 the Court refused to hear Plaintiff's Motion or compel attendance of subpoenaed witness MICHAEL J. MURRAY. [3899 Transcript Filed 4763].
21. That on January 19, 1979 the Court refused Plaintiff a jury trial for reason of its consolidation with the Title VII cause. [3899 Transcript Filed 4763].

22. That July 6, 1979-November 30, 1979 this single cause was called to trial consolidated with 76 C 4763 Title VII. [3899 Transcript Filed 4763].
23. That on September 14, 1979 Plaintiff was denied a Change of Venue; denied the right to present her motion; Defendant Attorney Heineke was permitted to argue the motion BEFORE IT WAS PRESENTED; permitted to bring a frivolous motion for a vacation for one of the Defendants. [3899 Transcript Filed 4763].
24. That on November 27, 1979 Judge Leighton dismissed all defendants - docketed 12-4-79. "E"
25. That on November 30, 1979 Judge Leighton vacated the orders consolidating this cause. That said order was docketed 12-4-79. "F"
26. That on December 7, 1979 Judge Leighton denied Plaintiff's Motion for a rehearing to file an amended complaint instanter. Docketed 12-11-79.

76 C 4763 Pre-Trial Motions (Consolidated) 78 C 3894, 78 C 3899, 78 C 3955

| Date | Transcript Filed | Subject Matter |
|---|---|---|
| 6/24/77 | 12/8/77 | Pl.'s TRO for Teaching/Principal's Job |
| 11/1/78 | 1/05/79 | Judge Grady, 78 C 3899 |
| 11/2/78 | | Judge Marshall 78 C 3894, 3955 |
| 11/3/78 | 1/20/79 | Judge Leighton Consolidation Title VII without a Motion under F.R.C.P. #42 |
| 11/17/78 | 1/10/79 | Pl.'s for an Appeal of CONSOLIDATION (3899) |
| 12/15/78 | 1/10/79 | Pl.'s vs. Defendant Attorney Heineke's Violation of U.S. Supreme Court Rule #39<br>Speaking for Defendants without Authority<br>Failure to separate GAROFALO (3899) |
| 1/19/79 | 2/22/79 | Pl.'s Motion for Jury Trial (3899) |

| | | |
|---|---|---|
| 4/20/79 | 4/20/79 | Pl.'s 25-page List of Exhibits (4763) [Reproduced in Pamphlet Form] |
| 5/11/79 | 5/11/79 | Pl.'s Motion for Trial (4763) |
| 7/6/79 | 9/10/79 | 24-hour Pre-trial call based on Pl.'s List of Exhibits and Motion for Trial |
| 7/13/79 | 9/17/79 | Pre-Trial Call: Defts.' Motion for Jury Trial, Count I and split of Complaint |
| 7/20/79 | 9/17/79 | Draft Order for Plaintiff to Answer to Above Motion |
| 8/27/79 | 9/10/79 | Trial Call: Exhibits Ordered to Remain with Minute Clerk, Mr. Grice. Erroneous Statement of Judge Leighton Charging Plaintiff's Responsibility Defendants' Attorneys: Querrey Law Firm |
| 9/14/79 | 11/4/79 | Pl.'s Motion for Change of Venue: She NOT PERMITTED TO SPEAK TO MOTION<br>Deft.'s Motion for Vacation for Defendant THOMAS FINNEGAN: Deft. Heineke spoke on both motions. |
| 3/22/80 | | Pl.'s Motion to file the above transcripts in separate appeal of 3899. Denied on *Sua Sponte order* and Defts. allegation that the Clerk of the U.S. District Court, legally trained, knows what he's doing better than the *Pro Se* Plaintiff "lay person." *Pro Se* Plaintiff was permitted no rebuttal of this argument:<br>As a result NO TRANSCRIPTS ARE FILED IN THIS APPEAL —separated November 30, 1979, two weeks before trial by Judge Leighton. |

## ARGUMENT

### I. THE DEFENDANTS DEPRIVED PLAINTIFF OF A MEANS OF A LIFELIHOOD AND HER CONSTITUTIONAL RIGHTS OF DUE PROCESS BY DISREGARDING THE TENURE LAWS.

"The Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois" [Pamphlet Reproduced by Appellant]. mandates an independent hearing officer (who is charged with the review of the charge "irremediable") and other protections for the tenured Plaintiff of 30 years. The Board Trial Committee: Defendants PRESTON, WILD, McGEE, and JOHNSON denied Plaintiff her due process rights Oct. 6, 1976 by denying Plaintiff's pre-trial motion [App. "G" *p. 12a.*].

State governments are subject to constitutional restrictions when dismissing employees. *Torcaro* v. *Watkins*, supra. Public employees may not be discharged without due process, *Taylor* v. *New York City Transit Authority*, supra. The administrative trial committee was not properly constituted and a meaningful opportunity to be heard was not provided Plaintiff, *Goss* v. *Lopez*, supra. Plaintiff was denied an independent hearing officer: The Board decided "irremediability" BEFORE TRIAL HEARING and no cause or evidence was ever presented verifying "irremediability" because of the pre-judgment. The prejudiced hearing committee provided Plaintiff violated her rights of due process, *Hartrop* v. *Board of Junior College, District 515.*

The Defendants chose to ignore Plaintiff's "liberty" and "property" rights under the Illinois Tenure Laws, the First and Fourteenth Amendments to the U.S. Constitution: "unnamed but constitutionally protected liberties under the due process provisions of the federal Constitution," *Finot* v. *Pasadena City Board of Educa-*

*tion.* A tenured teacher must have the MAXIMUM PROTECTION of the TENURE LAWS, *Reinhardt* v. *Board of Education, Danahoo* v. *Board of Education, Szirpan* v. *Board of Education,* and *Jones* v. *Hannon,* wherein Beulah Jones is a woman principal for the same Board of Education, City of Chicago and the same Defendants, who referred to the "other case before Judge Dunn", knowingly and maliciously violating the Tenure Laws. That the Board Members, DEFENDANTS were individually named in this suit BEFORE THE DISMISSAL OF McCUTCHEON and lost at every appeal level: knowingly and maliciously deprived Plaintiff of her means of a livelihood as a principal for three full years: under the same conditions and similar charges.

Wrongful dismissal suits that are based on deprivation of constitutional rights cited above, may be instituted in federal district court under 42 U.S.C. §1983, *McLaughlin* v. *Tilendis,* supra. The district court erred in denying Plaintiff a trial or any hearing.

**II. THE PLAINTIFF WAS DEPRIVED OF HER CONSTITUTIONAL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF PERSONAL LIBERTY AND DUE PROCESS TO A PRIVATE HEARING UNDER THE ILL. REV. STAT., 1975: 122: §34-85:**

By the delivery of the suspension notice, Sept. 7, 1976 [App. "A", *p.1a.*] in the presence of a male teacher subordinate staff member by the malicious overt action of Defendant WILLIAM ROHAN, who ordered Bill Bartuce (teacher) to remain; and by the publications of the specifications, Sept. 15, 1976 by the malicious overt actions of Defendants HANNON and HOFFENBERG before Plaintiff's Receipt of them, Sept. 16, 1976.

The Plaintiff had administrative rights to privacy of a suspension hearing before a public hearing, *Longarzo* v. *Anker,* supra and under the Ill. Rev. Stat. 122: §34-85: That knowingly and maliciously experienced Defendant WILLIAM ROHAN (35 years) refused to remove male

teacher, Bill Bartuce from the conference in which ROHAN delivered the suspension notice, on which there was a place for Bartuce's signature as witness. ROHAN delivered this notice "for conduct unbecoming a principal" in the presence of Bartuce, teacher-subordinate, that he deliberately brought along to witness the female "put-down": THAT WILLIAM BARTUCE IS NAMED AS A MALE TEACHER, UNCERTIFICATED IN ADMINISTRATIVE POSITION (politically-appointed) RECEIVING MORE PAY IN ADMINISTRATION POSITION, District Three than CERTIFIED PRINCIPAL-ADMINISTRATOR McCUTCHEON. Bartuce is named in EEOC Charges TCH5-0061, 1974-1976 and in the Title VII suit, 76 C 4763.

That knowingly and maliciously DEFENDANTS PUBLISHED CHARGES of "scanty and indecent attire" denying Plaintiff her personal "liberty" guaranteed by the First Amendment to the Constitution to change her clothes in the privacy of a wardrobe closet and to have these unproven allegations discussed in the privacy of a hearing guaranteed by the Ill. Stat., §34-85 and requested of Plaintiff WILLIAM ROHAN, Sept. 7, 1976—nine days before the charges were specified, maliciously fabricated by him to deprive her of her professional reputation.

That the First Amendment includes "liberty" which is guaranteed against deprivation by the State Agency in the Due Process Clause of the Fourteenth Amendment, *Hamilton* v. *Regents,* supra and that a Teachers' Professional Reputation may not be taken from him without due process of Law, *Lucia* v. *Duggan*: If a male teacher is permitted to wear a beard (as a personal "liberty") than the female Plaintiff must not be denied the right to change her clothes in a wardrobe closet without any scandal being fabricated and published as fact BEORE ANY HEARING MANDATED BY LAW. Plaintiff was denied the statutory right of a private hearing within ten days of the charges (per Tenure Laws). These rights were maliciously deprived by Plaintiff's "female put-down" before a SUBORDINATE MALE TEACHER by

a politically appointed District Superintendent WITH THE SAME PRINCIPAL'S CERTIFICATE AS PLAINTIFF.

Judge Leighton erred in dismissing Defendants who were charged specifically with the above deprivations of Plaintiff's rights and the FABRICATION OF CHARGE #3 by moving wardrobe closet across the hall to the "principal's office" with windows on the playground to bring this charge of indecency in public and in the alleged presence of children, who didn't exist in the specification, on a vague date with invisible witnesses WHO NEVER MADE AN APPEARANCE.

In the administrative hearing, Plaintiff was made a subject of ridicule by the janitors, who lied and the hearing committee permitted such behavior from their Board from favored witnesses. Plaintiff's Attorney to CHAIRPERSON AND VICE-PRESIDENT, Defendant PRESTON:

"But my client isn't laughing, Mrs. Preston."

**III. THE PLAINTIFF WAS DEPRIVED OF HER CONSTITUTIONAL RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS BY BEING PROSECUTED ON CRIMINAL CHARGES [#1, #3, #7] IN AN ADMINISTRATION HEARING:**

of lay persons without the protection of a jury trial, a specific date instead of the "Spring of 1975" [#3], face-to-face confrontation with witness DAVE SABLE, HAROLD JOHNSON, and PATRICK DOW [#5], specifically named as witnesses, Oct. 1, 1976 by Attorney Defendant MICHAEL J. MURRAY.

A Judgment of Acquital Bars further prosecution of Defendant on any aspect of a criminal charge. Plaintiff was acquited of Charge five before suspension, but it was brought again, specified exactly by the Defendant MICHAEL J. MURRAY [Oct. 1, 1976 letter]: "She was present at the trial and knows who the witnesses are."

She was denied the witness, Patrick Dow, a nine-year old boy, who lied for Thomas Moran at the McCutcheon trial, August 16, 17, 1976.

In three cases cited (*Burke, Burke* v. *U.S.* and *Christ* v. *Butz*) the United States Supreme Court ruled that the Fifth Amendment's Double Jeopardy Clause precludes retrial after the Reviewing Court has found the evidence legally insufficient to support guilty verdict. This ruling must apply to both McCutcheon's criminal acquitals [*Illinois* v. *McCutcheon,* El. 76404; 76-1338.]

An administrative body and complaining witnesses that willfully set themselves above the law should not only be abolished, but individuals should be fined under §42 U.S.C. §1983; 13 U.S.C. §241.

The Administrative Hearing Committee maliciously accepted the misinterpreted decisional authorities of Defendants' Attorney EARL B. HOFFENBERG. A case that was quoted many times was *Rizzo* v. *Board of Fire Commissioners*: whose hearing on misconduct was held before his criminal trial and therefore, the Administrative Agency had jurisdiction. However, McCutcheon was tried in criminal courts on charges #1, 5 before the same exact charges were brought WITH NO ADDITIONAL EVIDENCE before the administrative body in the malicious prosecution by six BOARD ATTORNEYS and ATTORNEY DEFENDANT MURRAY, who assisted Hannon's Attorneys in the Administration Hearing.

*Fender* v. *School District #25* refers to a teacher who was fired because he did physical damage to children and was referred to several times at the administrative hearing by HANNON'S ATTORNEY, EARL B. HOFFENBERG to character assassinate, slander the Plaintiff, and by inuendo that McCutcheon did damage to children by advising THEIR PARENTS TO SPANK THEM.

These two decisional authorities were invalid and irrelevant to the specific charges brought against the Plaintiff and should have been rejected by the committee of

legally unqualified lay persons under the influence of HANNON'S ATTORNEY.

**IV. PLAINTIFF WAS DENIED HER CONSTITUTIONAL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION TO CRITICIZE THE BOARD AND DEFENDANT JOSEPH P. HANNON ON NOV. 10, 1975 AT A PUBLIC MEETING OF THE BOARD: FOR THE ILLEGAL TRANSFER AND USE OF FUNDS IN VIOLATION OF ILL. REV. STAT. 1975: §34-22.2 and §34-49.**

All the testimony of Audubon teachers, principal in the Board Administrative Hearing concerning the improper rehab, misuse of funds brought as a defense against JOSEPH P. HANNON's charges maliciously and wrongfully brought: was struck by Chairperson PRESTON, who also suppressed other evidence of staff (MURRAY, HOFFENBERG, ROHAN, GAROFALO) misconduct in suspending, punishing, and improperly MCCUTCHEON for exercising her First Amendment Rights.

Exercise of a constitutionally protected right cannot be the basis of termintaion of a job. *Mt. Healty City Bd. of Ed.* Particularly, a principal, the only STATUTORY ADMINISTRATOR OF THE SCHOOL, may criticize the allocation of those school funds, improperly and illegally. *Hamilton* v. *Regents of the University of California.*

In addition, Defendants ROHAN and HOFFENBERG punished Plaintiff's witness [Laura Weiner Goulding and Nancy Gottlieb Pearson] against TOM MORAN, Jr. by transferring them to the Blaine School under the guise of "integration" June 17, 1977. The Blaine School was not BLACK, but Spanish. One was returned: the other, Nancy Pearson, personally involved with William Rohan's "featherbedding firemen' son was transferred to a black school and steps have now been taken to dismiss her BECAUSE SHE FILED A GRIEVANCE WITH THE UNION and was named as a witness in the federal suites

of Plaintiff. She was transferred and "integrated" as a teacher under 55 years of age: discrimination on account of age that was declared null and void by Judge Bua. On the day Plaintiff McCutcheon was suspended: Defendant GAROFALO hung a dead bird by the neck from the blackboard of her classroom and 3rd grade children were subjected to his sick mind on the First day of school, Sept. 7, 1976.

**V. THE COURT OF JUDGE LEIGHTON HAD NO JURISDICTION TO CONSOLIDATE THIS CAUSE WITH A TITLE VII FOUR YEAR OLD COMPLAINT ON NOV. 3, 1978 AND NO AUTHORITY TO DENY PLAINTIFF A PUBLIC JURY TRIAL BY REASON OF THIS CONSOLIDATION [Transcript January 19, 1979]:**

Because this individual cause (3899) was not transferred to him by Execution Decision Chief Justice Parsons) until Nov. 9, 1978 from Judge Grady.

Without a motion or notice to *Pro Se* Plaintiff under U.S. Supreme Court Rule #42: the transcript record of Nov. 3, 1978 indicates that this consolidation was achieved by more ex parte communications by the Defendants, who prejudiced the Court with allegations of "misconduct," "insubordination," and "incompetence" of *Pro Se* Plaintiff: NO EVIDENCE EVER HAVING BEEN PRESENTED IN ANY OF THESE CASES BY FOUR DEFENDANT ATTORNEYS who were permitted to speak in Court, place their names on the transcripts WITHOUT FILING AS ATTORNEYS OF RECORD UNTIL THE FACT OF *Pro Se* Plaintiff's protests, eg. THOMAS BROWN, filed as Attorney of Record, Nov. 7, 1978 AFTER HE SPOKE FOR THE CONSOLIDATION; filed as ATTORNEY OF RECORD, Aug. 27, 1979 in 76 C 4763 AFTER HE HAD SPOKEN FOR A FULL YEAR IN EVERY ACTION, 4763.

On January 19, 1979 Plaintiff was denied a jury trial in this action by Judge Leighton by reason of this wrongful consolidation. Attorney Brown alleged that she had

filed an "interlockatory" appeal against the JUDGMENT OF JUDGE PARSONS—a deliberate lie to misinform Judge Leighton, who demanded no proof of such allegations from Defendants at any time because he was previously prejudiced by ex parte communications.

**VI. THE NOV. 3, 1978 "ORDER OF REASSIGNMENT FROM GRADY TO LEIGHTON" WAS NOT A VALID ORDER OF JUDGE GRADY:**

But evidence created after the fact by ex parte communications between the Defendants and the Deputy Clerks of the Court with full knowledge of H. Stuart Cunningham and misinformation to Judge Grady, Judge Leighton.

In the transcript record of Nov. 1, 1978 of this case there is no "order of reassignment from Grady to Leighton": neither was there any record or "recommendation" of "reassignment until after the fact of the wrongful consolidation by Judge Leighton." Neither would Judge Grady or Judge Leighton make such an order outside of the Executive Committee or in total disregard of Chief Justice Parsons. Nor would either Judge Grady or Judge Leighton discourteously refer to the other as "Grady" or "Leighton" or slip away from the habits of years of experience on the bench.

This order was FALSIFIED BY DEFENDANTS and/or the Clerk of the Court, who refused to correct it on Plaintiff's [Certified Mail Request]: It was done as a schoolboy trick on the *Pro Se* Plaintiff-Teacher by the Defendants, who also made the mistake of sending the original in red ink to the Plaintiff, which she wishes to place as evidence before the Appellate Court.

**VII. THE COURT ERRED IN DISMISSING WILLIAM ROHAN, LEAVING HIS NAME OUT OF THE JUDGMENT ORDER (3899) [App. "E". p. 6a]:**

And failing to decide on Plaintiff's Motion for Summary Judgment of Default Against Defendant Rohan.

William Rohan received the notice of summons on Oct. 5, 1978; his attorney THOMAS P. BROWN did not file an appearance until Nov. 7, 1978. The Court erred in dismissing them.

**VIII. THE COURT ERRED IN DISMISSING ALL DEFENDANTS FOR ALLEGED IMMUNITY AS ACTING IN A "QUASI-JUDICIAL" CAPACITY (Judgment Order—3955) [Appendix "F," p. 10a.]:**

BECAUSE DEFENDANT JOSEPH P. HANNON WAS THE PETITIONER: DEFENDANT EARL B. HOFFENBERG WAS THE PETITIONER'S ATTORNEY: AND DEFENDANT MRS. CAREY B. PRESTON DID NOT ACT IN HER JUDICIAL CAPACITY, BUT AS THE VICE-PRESIDENT OF THE CHICAGO BOARD OF EDUCATION.

Chairperson Mrs. Carey B. Preston refused to unlock the doors of a public hearing in which she was not only the Chairperson, but the Vice-President of the Board, to whom the Attorneys and Security Guard were insubordinate in locking said doors TO SUPPRESS THE EVIDENCE AGAINST THE BOARD by Plaintiff in her wrongful suspension. When Defendant Preston refused to unlock the doors of an alleged public hearing in which Plaintiff brought charges against the General Superintendent, *Et. Al.* she was acting as Vice-President of the Board AND NOT AS A "FAIR AND UNBIASED" judge: She was also denying Plaintiff her statutory right to a public hearing and her constitutional rights to liberty and due process.

Public School Officials are not protected against suits under 42 U.S.C. §1983 by the Ill. Tort Immunity Act, Chap. 85: §2-201 *et seq.* Only a qualified immunity is retained, dependent on good faith *McLaughlin* v. *Tilendis* which no one of these Defendants demonstrated in their overt acts against Plaintiff—in the intimidation of her family, confiscation of her property, and the harassment of her witnesses, who were also locked up while the janitors and members of their Union wandered the build-

ing during their work hours. It is a violation of due process, when one who makes a recommendation to dismiss is also considered "a quasi-judge" (HANNON) along with his attorney (HOFFENBERG) and the complaining witnesses, reps. *Funetes* v. *Sherin,* In the Judgment Order [App. "F" p.10a.] the Court erred in dismissing Defendants PRESTON, HANNON, HOFFENBERG. That Defendants HANNON, HOFFENBERG were bringing charges for dismissal, assisted by MICHAEL L. MURRAY and Complaining Witnesses HEING, ROHAN, and GAROFALO and in no way can be considered in a "quasi-judicial" capacity. By these errors the Court of Judge Leighton prejudicially condoned a "Kangaroo Court" exactly as the *Pro Se* Plaintiff had named it in her original complaint and in her appeal: and had been reprimanded by Judge Leighton for such "language" in deprivation of her First Amendment Rights.

That the Court erred in this same Judgment Order by misinterpreting Appellate and U.S. Supreme Court decisions: *Butz* v. *Economou* and *Hampton* v. *Hanrahan,* which denied immunity to federal and state officials: "There is no basis for according to federal officials a higher degree of immunity from liability when sued for a constitutional infringement than is accorded to State Officials under 42 U.S.C. §1983." *Butz* v. *Economu, supra.*

That agency officials, who perform functions analogous to those of a prosecutor are afforded immunity, *Butz* v. *Economou*: However, Defendants PRESTON AND HOFFENBERG held a conflict of interests in this "Kangaroo Court" in that PRESTON acted as the Vice-President of the Board and not as an impartial "Judge" and Hoffenberg failed to relinquish his position as BOARD ATTORNEY in order to represent the Petitioner JOSEPH P. HANNON.

That Defendant PRESTON also acted as Vice-President of the Board and not as an impartial Judge in suppressing the evidence of the illegal transfer and misuse of funds for a $30,000 janitors' office on Nov. 10, 1975 and

deprived Plaintiff of her constitutional rights to criticize the Board for allocation of funds at the Audubon School.

## IX. THE DEFENDANT ATTORNEYS HAVE NO STATUTORY AUTHORITY TO REPRESENT EMPLOYEES HANNON, HEING, ROHAN, GAROFALO: AND HAVE NO STATUTORY AUTHORITY TO REPRESENT THE DEFUNCT BOARD OF EDUCATION ON APPEAL WITHOUT A PUBLIC CONTRACT [Ill. Rev. Stat., 1975, 122: §34-49]

On Nov. 1, 1978, Defendant Attorney HEINEKE was ordered by Judge Grady to show cause why he was representing the Board without a public contract made in open meeting. This order he did not comply with, but went ex parte to Judge Leighton to get an improper consolidation by legal trickery to avoid complying with Judge Grady's order.

That under the Ill. Rev. Stat., 1975: Chap. 122: §34-49 the Law Firm of Heineke and Shrader is representing Defendants improperly and are the recipients of illegally transferred funds, that Defendant Attorney Heineke is also in violation of the United States Supreme Court Rule #39 as he solicited this case from H. Stuart Cunningham, the Clerk of the Court on Oct. 16, 1978 was the subject of Plaintiff's Complaint to the Attorney Registration and Discipline Commission of the Illinois Supreme Court and one of the pleading in an alleged "Interlockatory Appeal" to the U.S.C.A. #

That Attorney Defendant MICHAEL J. MURRAY has no authority to retain Attorney THOMAS P. BROWN, *et. al.* either as an employee of the Board or as the Chief Attorney for the Board without bringing the whole suite before the Board—HIS MISCONDUCT HE HAS SUPPRESSED FOR OVER EIGHT YEARS [73 Ch 1355].

That all Defendants and their attorneys are the recipients of illegally transferred funds of the $550 million that they allege they do not know where it went. THIS IS WHERE IT'S AT!

## CONCLUSIONS

Judge Leighton inaccurately and prejudicially ruled: "The Plaintiff does not . . . nor can she allege facts, which would prove a constitutional deprivation or a charge of class based discrimination" because Plaintiff presented documented evidence with the complaint and every motion —not one ever being heard by the Court. She filed no charges of CLASS BASED DISCRIMINATION in the wrongful dismissal firing of a TENURED PRINCIPAL. *Pro Se* Plaintiff invoked jurisdiction under Title 42 U.S.C. §1983, 1988. As no limitations are prescribed under 42 U.S.C. §1983 the District Court is bound to observe the same limitations as a State Court would in regards to Ill. Rev. Stat., 122: §34-85, §34-22.7, and §34-49 as well as the TENURE LAWS, reproduced in pamphlet form: "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois."

Judge Leighton failed to consider Motions #7, #8, #9 or the two Nov. 1 orders of Judge Grady, which Defendants deliberately failed to answer. Judge Leighton failed to consider the Retaliation, Harassment following Plaintiff's exercise of her rights to file suit 73 Ch 1355, EEOC, FEPC, HEW Charges and the right to oppose a discriminatory Administrative Compensation Plan, 71-270 that Defendants implemented only to dismiss Plaintiff: having refused her any "merit" 1974 rating, which established her pay and having refused her an earned merit raise, Dec., 1973 BECAUSE SHE EXERCISED HER RIGHTS TO BRING SUIT FOR THIS REDUCTION IN SALARY, DEPRIVATION OF LIBERTY AND PROPERTY.

The Court of Judge Leighton denied Plaintiff these protected rights guaranteed by the U.S. CONSTITUTION, Amendments #1-14 and complaints brought under U.S.C. 1983. Judge Leighton's Judgment Orders seemed to brush off the question of the PLAINTIFF'S RIGHT TO A

JURY TRIAL without really deciding the propriety of the hearings given by the Board totally disregarding her tenure rights of due process (XIV) liberty (I) and property (V).

The Court erroneously denied Plaintiff any hearing on any motion, while permitting unqualified attorneys to argue her motions BEFORE THEY WERE PRESENTED. Eg. Sept. 14, 1979: "Petition for a Change of Venue or in the alternate a Motion to Disqualify Judge GEORGE N. LEIGHTON on the Grounds of Prejudice." The Court permitted the Defendant Attorney Heineke to argue that the Judge had always been fair to them: Judge Leighton should have disqualified himself AFTER THE DEFENDANTS EX PARTE COMMUNICATIONS, October-November, 1978 *et seq.*, that not only went on outside the Courtroom, but were indulged in the Courtroom by discussing Plaintiff's Motions with the Defendant Attorneys and denying her the right to present them before the Court—or to speak at all-reprimanding Plaintiff for "interruptions" when she objected to this improper procedure and legal trickery indulged by the Court for attorneys only.

The Court denied Plaintiff equal representation by dismissing her attorneys before trial; by denying her new attorneys any "Discovery" and by denying her requests for the public file from his chambers, Nov. 3, 1978.

For the above reasons, the decision should be reversed in its entirety and all Defendants held for costs punitive and emotional damages for the misinformation vexacious, and delay of consultation.

For all the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the judgment on all Counts without remand;

Or in the Alternative, to vacate the judgment and remand the same to trial court for a new trial, in which case, Appellant requests:

a) an injunction against the Defendants, enjoining them from denying her a teachers/administrators' job and salary at the Third Lane, top step rate of $32,655 for 52 weeks (teachers pay) in the interim of adjudication; and back pay at the rate of Third Lane top step, 1976-1979.

b) a Writ of Mandamus for Defendants to pay all Court costs, legal fees, interest lost on loan and pension as a result of the mistrial occasioned by their vexacious, malicious delay of four years 1976-1980 and wrongful consolidation of two years, 1978-1980.

Appellant feels that the above two conditions are necessary for the new Board to show good faith or before settlement can be effected.

Respectfully submitted,

.....

Anabel J. McCutcheon

**Appendix "A"**

**Board of Education**
**City of Chicago**
**228 North LaSalle Street**
**Chicago, Illinois 60601**

**September 7, 1976**

Miss Anabel J. McCutcheon
1917 Tanglewood Drive
Glenview, Illinois 60025

Dear Miss McCutcheon:

Pursuant to Section 34-85 of The School Code and Section 4-30 of the Rules of the Board of Education of the City of Chicago, you are hereby notified that you are suspended from your duties as the principal of Audubon Elementary School effective immediately pending trial before a Trial Committee of the Board of Education of the City of Chicago as provided by statute on the charges of conduct unbecoming a principal in the Chicago Public Schools and failure to discharge your duties and responsibilities as a principal in said school.

Yours very truly,
Dr. Joseph P. Hannon
General Superintendent of Schools

JPH:MJM:pm
Miss Anabel J. McCutcheon
1917 Tanglewood Drive
Glenview, Illinois 60025

Received copy of the foregoing notice of suspension this ..... day of September, 1976.

.....
Anabel McCutcheon

**Appendix "B"**

**To the Board of Education**
**of the City of Chicago**
**The General Superintendent of Schools**

**September 16, 1976**

hereby makes the following charges against ANABEL J. McCUTCHEON, a principal in the Chicago Public Schools.

CHARGES

I charge ANABEL J. McCUTCHEON with conduct unbecoming a principal in the Chicago Public Schools and failure to discharge duties and responsibilities as principal of Audubon Elementary School.

SPECIFICATIONS

1. On September 12, 1975 Miss Anabel J. McCutcheon threatened to cause bodily harm with a baseball bat to Mario Garofalo, engineer-custodian, of the Audubon School.
2. Miss Anabel J. McCutcheon failed to present acceptable performance appraisal objectives for the 1975-76 school year despite suggestions, conferences, recommendations, and directives of her superiors to do so.
3. In the Spring of 1975 and on June 19, 1975, Miss Anabel J. McCutcheon was observed by employees of the Board of Education scantily and indecently attired in the Audubon Elementary School.
4. On November 10, 1975, Anabel McCutcheon failed to follow payroll procedures in that she claimed a day of illness leave (A) when in the afternoon she attended and spoke at the public portion of a meeting of the Board of Education.
5. On January 9, 1976, Miss Anabel J. McCutcheon kicked Tom Moran, Jr, the school janitor, in the buttocks.
6. Miss Anabel J. McCutcheon failed to follow a directive from the District Superintendent issued on

February 2, 1976 ordering her to stop making recommendations on suspension forms of steps to be taken by parents such as spanking. She indicated such insubordination in a letter to Dr. Heing, District Superintendent, on February 4, 1976 and on February 11, 1976, she continued in her defiant and insubordinate manner.

7. Miss Anabel J. McCutcheon suspended two pupils for 19 days on February 11, 1976. The District Superintendent shortened the suspension to nine days in a letter to parents and principal dated February 18, 1976. Miss Anabel J. McCutcheon disregarded the direct order of her superior and ordered that the suspension for 19 days stand thereby being insubordinate and violating Board Rule 6-9 (Rev. 5/28/75).
8. Miss Anabel J. McCutcheon refused to send necessary personnel identification data to the office of District 3 and the Department of Teacher Personnel despite letters requesting the information from two District Superintendents and the Assistant Superintendent in charge of Personnel
9. Miss Anabel J. McCutcheon refused to meet or cooperate with the Department of Field Auditors for the purpose of reviewing the audit report and recommendations of the Auditor completed on May 17 and 18, 1976 regarding improper bookkeeping procedures at Audubon Elementary School.
10. Miss Anabel J. McCutcheon has repeatedly failed to follow the recommendations, suggestions, and directives of her superiors for the improvement of her performance as a principal, has continued to be insubordinate, and has otherwise failed to correct her deficiencies and has exhibited such deleterious conduct towards personnel of the Chicago Board of Education that her conduct was, therefore, deemed to be irremediable.

**Appendix "C"**

**Board of Education**
**City of Chicago**
**228 North LaSalle Street**
**Chicago, Illinois 60601**

**October 3, 1977**

Miss Anabel J. McCutcheon
1917 Tanglewood Drive
Apartment 3B
Glenview, Illinois 60025

Dear Miss McCutcheon:

Enclosed is a certified copy of Board Report 77-271-3 adopted October 3, 1977 wherein the Board of Education approved and adopted the report of the Trial Committee recommending your dismissal from the service of the Board of Education of the City of Chicago.

Very truly yours,
Michael J. Murray
Attorney

MJM:EBH:dw
Enclosure

Certified Mail
Return Receipt Requested

**Appendix "D"**

**No. 79-578**
**in the**
**Appellate Court of Illinois**
**First District**

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

vs.

STATE OF ILLINOIS, Division of Unemployment Insurance, etc. et al., Chicago Board of Education,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
No. 78 L 23980
Honorable RICHARD L. CURRY, Judge Presiding.

ORDER

THIS CAUSE COMING ON TO BE HEARD on the motion of the Defendants-Appellees to amend the record on appeal and the Court being fully advised in these premises:

IT IS HEREBY ORDERED THAT:

(1) The record on appeal be amended to include 1) the copy of a notice of a claims adjudicator's decision dated April 12, 1977), 2) a copy of a letter dated April 22, 1978 from the plaintiff appealing the claims adjudicator's decision of April 12, 1977, 3) the Report of Proceedings before the Hearings Referee.

**Appendix "E"**

**United States District Court**
**Northern District of Illinois**
**Eastern Division**

Name of Presiding Judge, Honorable George N. Laighton

Cause No. 78 C 3899 Date November 27, 1979

Title of Cause

Anabel J. McCutcheon, vs. The Chicago Board of Education, et al

Brief Statement of Motion

Order denying plaintiff's motions for summary judgment of default against certain defendants.

The rules of this court required counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addressed of their attorneys. Please do this immediately below (separate lists may be appended).

• • •

Reserve space below for notations by minute clerk

Plaintiff's motions for summary judgment of default against defendants Murray, Preston, Hoffenberg, Hannon, Heing, and Garafolo, motions made before Judge Grady, are denied. It appears of record that within time required by law, these defendants appeared and filed motions to strike the paragraphs of plaintiff's complaint applicable to them. These motions, treated as motions to dismiss, are before the court of ruling.

**Appendix "E"**

**United States District Court**
**Northern District of Illinois**
**Eastern Division**

Name of Presiding Judge, Honorable George N. Leighton

Cause No. 78 C 3899 Date November 28, 1979

Title of Cause

Anabel J. McCutcheon, vs. The Chicago Borad of Education, et al

Brief Statement of Motion

Motions to strike and dismiss.

The rules of this court required counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addressed of their attorneys. Please do this immediately below (separate lists may be appended).

• • •

Reserve space below for notations by minute clerk

Enter Memorandum Order:

Motions of defendants to strike the paragraphs of the complaint that pertain to them and dismiss plaintiff's suit on the ground that the allegations of the complaint do not state a claim on which relief can be granted, are granted. This suit is dismissed as to all defendants.

**Appendix "E"**

**In the United States District Court**
**for the Northern District of Illinois**
**Eastern Division**

ANABEL J. McCUTCHEON,

Plaintiff,

vs.

THE BOARD OF EDUCATION OF CHICAGO, et al.,

Defendants.

78 C 3899

Before the Honorable George N. Leighton, United States District Judge

MEMORANDUM ORDER

This cause is before the court on motions of defendants to strike the paragraphs of the complaint that pertain to them and dismiss plaintiff's suit on the ground that the allegations of the complaint do not state a claim on which relief can be granted. These motions are granted; and as to all defendants, this suit is dismissed.

In bringing this suit, plaintiff invokes 42 U.S.C. §§ 1983 and 1985. As to §1983, this court cannot grant relief unless there are allegations which if proven will establish the "deprivation of a constitutional right." *Ryan* v. *Aurora City Board of Education*, 540 F.2d 222 (6th Cir. 1976); see 42 U.S.C. §1943. As to §1985, it is uniformly held that a claim cannot be made thereunder without a charge of class-based discrimination. *Griffin* v. *Breckenridge*, 403 U.S. 88, 102 (1971). In this case plaintiff does not, nor can she allege facts which would prove a constitutional deprivation or a charge of class-based discrimination.

So ordered
George N. Leighton, United States District Judge
Dated: November 28, 1979

**Appendix "F"**

**United States District Court**
**Northern District of Illinois**
**Eastern Division**

Name of Presiding Judge, Honorable George N. Leighton

Date November 30, 1979

Cause No.
78 C 3899 and consolidated cases 78 C, 78 C 3894, and 78 C 3955

Title of Cause

Anabel J. McCutcheon, vs. The Chicago Board of Education, et al

Brief Statement of Motion
Order, on motion of the court, vacating previous orders effecting consolidation of these cases.

The rules of this court required counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addressed of their attorneys. Please do this immediately below (separate lists may be appended).

• • •

Reserve space below for notations by minute clerk

On motion of the Court, it is ordered that all previous orders having the effect of consolidating these cases are vacated. Case No. 76 C 4763 will go to trial with only the remaining portion of the allegations as to the Board in 78 C 3894 consolidated as Count II hereof.

**Appendix "F"**

**In the United States District Court**
**for the Northern District of Illinois**
**Eastern Division**

ANABEL J. McCUTCHEON,

Plaintiff,

vs.

MRS. CAREY B. PRESTON, et al.,

Defendants.

78 C 3955
Before the Honorable George N. Leighton
United States District Judge

## MEMORANDUM ORDER

This cause is before the court on defendants' motion to dismiss plaintiff's complaint on a number of grounds, the important ones being that plaintiff does not state a claim on which relief can be granted and that from the allegations it appears that on the occasions in question defendants acted in a quasi-judicial capacity which renders them absolutely immune from plaintiff's claims. Plaintiff alleges that defendant Hannon, General Superintendent and chief administrative officer of the Chicago Board of Education suspended her from the position of school principal; that defendant Preston was Vice-President of the Board and Chairperson of the trial committee that heard the charges against plaintiff; and that defendant Hoffenberg was the attorney for the board who presented the charges and prosecuted them. She further alleges that on one or more occasions, contrary to law, the hearings of the charges against her were not public. Plaintiff does not state any facts which, if true, would show in what way or manner she has been injured.

This court is constrained to agree with defendants that plaintiff's complaint does not state a claim on which relief can be granted; and that more importantly, each defendant in this case is absolutely immune from plain-

tiff's suit since on the occasion in question they acted quasi-judicially. *Butz* v. *Economou*, 438 U.S. 478 (1978): see *Hampton* v. *Hanrahan*, 600 F. 2d 600, 631 (7th Cir. 1979); *Consumers U. of United* v. *American Bar Ass'n*, 470 F. Supp. 1055, 1059-60 (E.D. Va. 1979). Therefore, the motion to dismiss is sustained; this suit is dismissed.

So ordered

George N. Leighton, United States District Judge

Dated: November 26, 1979

**Appendix "G"**

*Excerpt from Bound Preceeding*
*76-866-1*

Now comes Anabel J. McCutcheon, by and through her attorneys, John B. Schwartz and Ronald S. Cope and hereby moves as follows:

1. That the following be provided her prior to trial: a list of the names and addressed of the witnesses, and all documents, memoranda, written statements and reports in the possession of Joseph P. Hannon, the Law Department of the Board of Education, Assistant Superintendent of Personnel, Dr. Gerald J. Heing, William Rohan, James G. Moffat, Bessie F. Lawrence or their agents or attorneys relating to the charges and specifications, against Anabel J. McCutcheon contained in the Notice of Suspension dated September 7, 1976, and the Specifications of September 15, 1976 and the letter of October 1, 1976 from the Law Department of the Board of Education.
2. That an impartial hearing officer or officers, other than members of the Board of Education and persons connected with the Board of Education, be appointed to hear the charges. That the failure to appoint an impartial hearing officer or officers is a denial of due process and equal protection guaranteed under the 14th Amendment of the United States Constitution and Section 2 of Article I of the Constitution of Illinois of 1970.

In addition, movant states that teachers and principals in all other school districts throughout the State of Illinois, other than the school district encompassing the City of Chicago, are entitled to a hearing before an impartial hearing officer in connection with any disciplinary action. There is no rational basis for discriminating against this principal.

3. Movant further states that hearing officers appointed to hear disciplinary matters in other school districts are licensed attorneys who are trained in the law and have the legal knowledge to evaluate and rule on questions of evidence and law presented at said hearings. The present Committee of the Board of Education assigned to hear these charges is not so qualified.
4. That the Board of Education be required to employ outside legal counsel to advise the Board on questions of evidence at legal issues raised at these hearings. That the Board members are not so qualified as to rule on legal issues and questions of evidence and that any advice from the legal department of the Board of Education, which is in fact acting to persecute the charges—

   —prosecute the charges, would be extremely prejudicial to the said Anabel J. McCutcheon and could not result in a fair and impartial hearing.
5. That Committee Member Henry McGee excuse himself from serving on the Committee in that the wife of said Committee member was a teacher in the Chicago public schools and was subject to evaluation by this principal Anabel J. McCutcheon and rereceived an unsatisfactory rating. This could be the basis for prejudice on the part of this Board member towards this principal.
6. That Specification No. 5 be stricken as having no basis in law, by reason of the fact that the Honorable Judge Nathan Englestein, in a hearing of criminal charges brought by Thomas Moran and the People of the State of Illinois against Anabel J. McCutcheon, has decided on August 18, 1976, that no such battery or assault has, in fact, taken place.

Further that to retry that issue contained in Specification No. 5 is in violation of Anabel J. McCutcheon's rights under the United States Constitution and the Constitution of the State of Illinois of 1970.

7. That Specification No. 10 is vague and indefinite and contains subjective conclusions and Anabel J. McCutcheon is not able to respond to such Specification. This is likewise true of Specification No. 8.
8. That with regard to Specification No. 3, the charges contained therein are unsupported and unfounded and subjective conclusions, which have never been acted upon by the law enforcement agencies and that no notice of such charges was ever brought to the attention of Anabel J. McCutcheon.
9. That Anabel J. McCutcheon moves this Committee to suspend all proceedings against her until the final determination of her EEOC action brought against the Board of Education, District Three, has been resolved in the United States District Court and charges brought against the Chicago Board of Education and it divisions and agents in the Chancery Division of the Circuit Court of Cook County, No. 73 CH 1355. That the present action is brought against this principal not because of the merit of any charges against her, but because of her action against the Board of Education as described above.
10. That at no time have documents in support of the charges and specifications ever been provided Anabel J. McCutcheon or her attorneys and she has thereby been denied her rights in due process under the United States Constitution and the Illinois Constitution of 1970.
11. That the Board of Education has failed to provide E-1 and E-2 Notices as to any of the charges as required by the statutes of the State of Illinois and the Rules and Regulations of this Board.

Wherefore, it is respectfully prayed that this Committee dismiss all of the charges brought against the said Anabel J. McCutcheon and reinstate her to her position of principal with full back pay.

**Appendix "H"**

## EDITORIALS

### 1-year trial travesty of justice

Sept. 28, 1977 *Booster* "Editorials"

The year-long school board trial of Anabel McCutcheon is finally drawing to a close. A special committee heard the last of the testimony connected with the 10 charges filed against the suspended Audubon principal and all that remains is for that board to announce its verdict and recommendations.

Whether McCutcheon is acquitted or fired, we only hope a decision comes soon so the 58-year-old veteran principal can either resume her career or begin looking for work elsewhere.

Suspended since September of last year, she's already had to spend too much time in a kind of legal limbo where she hasn't actually been found guilty of any wrongdoing, but suffers the same stigma and loss of income as if she had.

Of course, schools Supt. Joseph Hannon was right in suspending her, once he filed the charges of poor performance and unprofessional conduct against her.

But the trial board didn't have to allow the proceedings to drag out for a year.

Ironically, it took less time for McCutcheon to win an appeal on a criminal conviction stemming from one of the charges filed against her—that she threatened a school janitor with a baseball bat—than it took for the trial board to rule on that same allegation.

During that time, incidentally, her attorney found it necessary to quit the case because he couldn't devote

the necessary time to the trial board hearings without shirking his duties to other clients.

Even the recent trial of Patty Columbo and her lover didn't get that involved—and they were up for mass murder.

Innocent or guilty, McCutcheon is right on at least one point—she was victimized by the system.